

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: VALSARTAN, LOSARTAN, AND CIVIL ACTION NUMBER:
IRBESARTAN PRODUCTS LIABILITY 1:19-md-02875-RBK
LITIGATION CASE MANAGEMENT CONF.

Mitchell H. Cohen Building & U.S. Courthouse
4th and Cooper Streets
Camden, New Jersey 08101
Thursday, August 3, 2023
Commencing at 1:16 p.m.

B E F O R E: THE HONORABLE ROBERT B. KUGLER,
UNITED STATES DISTRICT JUDGE, and
THOMAS I. VANASKIE (RET.), SPECIAL MASTER

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(PROCEEDINGS, held in open court before the Honorable
Robert B. Kugler, United States District Judge, and Thomas I.
Vanaskie (Ret.), Special Master, at 1:16 p.m. as follows:)

4 THE COURTROOM DEPUTY: All rise.

5 JUDGE KUGLER: Good afternoon. Have a seat, please.

6 Okay. Everybody's summer going well, I hope. People
7 getting away. I guess you have kids to take to college soon, a
8 lot of you, so...

9 As you see, Judge Vanaskie is here. He's got some
10 things that he's going to talk to you about that are pending.

11 Can we get to the order to show cause and that stuff
12 first and get that out of the way?

13 || JUDGE VANASKIE: Makes sense.

14 JUDGE KUGLER: The deficiency notices. I understand
15 that the Hardwick, Feria, and Janecek cases have been resolved.
16 So those orders to show cause are dismissed.

17 And the Smason, S-M-A-S-O-N, and Young matters, you
18 want to relist next month, correct?

19 MR. HARKINS: That's correct, Your Honor. Steve
20 Harkins from Greenberg Traurig, on behalf of the Teva
21 defendants and the joint defense group.

22 We have one other update to that list. The matter in
23 Ricky Young, number 5 on our list, was granted an extension.
24 So that order to show cause can be continued to the next case
25 management conference.

1 JUDGE KUGLER: Right. Okay. And you have a number
2 that you want to put on an order to show cause. Any updates on
3 those?

4 MR. HARKINS: Three updates, Your Honor. On our
5 list, listed as number 8, number 13 and number 18. Number 8,
6 Seifert; number 13, Vander; and number 18, Achkova, those three
7 orders to show -- or those three requests can be withdrawn.
8 And we would request orders to show cause returnable at the
9 next case management conference in the remaining 16 cases.

10 JUDGE KUGLER: Okay. There's Sturgill,
11 S-T-U-R-G-I-L-L. Anybody here on that?

12 (No response.)

13 MS. GOLDENBERG: Judge, I think I can short-circuit
14 this.

15 We addressed all the ones that I had notes on from
16 plaintiffs' counsel, so the rest of them I don't think
17 anybody's here to speak on.

18 JUDGE KUGLER: Okay. Well, I have to announce them
19 anyway so they're on the record.

20 Taffnie Williams.

21 (No response.)

22 JUDGE KUGLER: Sharon Thomas.

23 (No response.)

24 JUDGE KUGLER: Joseph George.

25 (No response.)

1 JUDGE KUGLER: Michelle Worms.

2 (No response.)

3 JUDGE KUGLER: Robert Lee.

4 (No response.)

5 JUDGE KUGLER: Karl Bartels.

6 (No response.)

7 JUDGE KUGLER: Tom Lemen, L-E-M-E-N.

8 (No response.)

9 JUDGE KUGLER: James Magee.

10 (No response.)

11 JUDGE KUGLER: Phyllis Axt, A-X-T.

12 (No response.)

13 JUDGE KUGLER: Beatrice Meza, M-E-Z-A; Estate of
14 Barbara Lipscomb.

15 (No response.)

16 JUDGE KUGLER: Benjamin Andrews; James Polk.

17 (No response.)

18 JUDGE KUGLER: Tina Schram; Dean Tasman.

19 (No response.)

20 JUDGE KUGLER: They will all be listed for orders to
21 show cause returnable at the next status conference.

22 All right. You have now quite a few more you want to
23 relist, correct?

24 MR. HARKINS: That's correct, Your Honor.

25 Of the 30 cases on our second table, there are three

1 that we are withdrawing: Number 23, Jonathan Lee; number 29,
2 Dixie Buxton; and number 30, Pauline Harris. And we'll relist
3 the remaining 27 cases on the next agenda.

4 JUDGE KUGLER: Okay. Tommy Benton; Jerome Zimmerman.

5 (No response.)

6 JUDGE KUGLER: Estate of Vincent Thompson.

7 (No response.)

8 JUDGE KUGLER: Ronald Jackson.

9 (No response.)

10 JUDGE KUGLER: Byron Wrigley.

11 (No response.)

12 JUDGE KUGLER: Steven Petrie.

13 (No response.)

14 JUDGE KUGLER: Gregory Adams; Antonio Guzman; Lori
15 Stratton.

16 (No response.)

17 JUDGE KUGLER: Lawrence Taliaferro.

18 (No response.)

19 JUDGE KUGLER: Darlene Barzee.

20 (No response.)

21 JUDGE KUGLER: Shirley Black.

22 (No response.)

23 JUDGE KUGLER: Anthony Burton; Lillian Ghrigsby;
24 Dianne Hardy; Robert Henley; Rhonda Kent; Arthur Smith; Jesus
25 David Torres.

1 || (No response.)

JUDGE KUGLER: Joy Higgins; Gonzalo Salazar; Dinah Brown; Rosanne O'Callaghan; Shawna Martinez; Emmett Wesson; Estate of Barbara Kaluhiokalani; Estate of Mary Hines.

5 (No response.)

6 JUDGE KUGLER: Those matters will be listed at the
7 next return date.

8 Anything further, Mr. Harkins?

9 MR. HARKINS: Nothing further. Thank you, Your
10 Honor.

11 JUDGE KUGLER: All right. Judge Vanaskie.

12 JUDGE VANASKIE: Yeah. There were three issues I
13 think I wanted to go over, if we could, today. First dealing
14 with the discovery schedule on the irbesartan and losartan
15 discovery. It seems to be a --

16 MR. HARKINS: Judge, I'm happy to report that the
17 parties were able to meet and confer prior to our meeting
18 today. We have revisited the schedule that is reflected in
19 footnote 2 of the defendants' position statement as a potential
20 compromise.

21 JUDGE VANASKIE: Right. Have you agreed to that
22 compromise?

23 MR. HARKINS: Which would require -- apologies.

24 JUDGE VANASKIE: I'm sorry. Go ahead. That was my
25 fault.

1 MR. HARKINS: And just to confirm, the parties are
2 agreeable in principal -- and we would submit an order to this
3 effect if it's agreeable to the Court -- to the August 31, 2023
4 deadline to submit disputes to Your Honor; the December 15,
5 2023 deadline to produce noncustodial documents; and the
6 February 28, 2024 deadline to complete the custodial
7 production. And the parties believe we could continue to meet
8 and confer on the other deadlines, such as for depositions and
9 eventually expert briefing that were reflected in the
10 plaintiffs' schedule.

11 JUDGE VANASKIE: Is that correct?

12 MS. GOLDENBERG: It is. We were nice that way this
13 time. Yes, Your Honor, it is.

14 JUDGE VANASKIE: All right. So would you submit a
15 proposed order reflecting that?

16 MS. GOLDENBERG: Yes. We'll get one to you in the
17 next few days, I think; yes.

18 MR. HARKINS: Certainly.

19 JUDGE VANASKIE: All right. Very well. Thanks. So
20 that was the first issue.

21 The second issue is one I come before you with egg on
22 my face, and that's the motion dealing with the Valisure
23 discovery, the subpoena, and the motion for protective order.

24 Are you prepared to address that at all today in any
25 greater length than the letter briefs that you submitted on

1 this issue?

2 MR. HARKINS: Your Honor, for the defendants, I
3 believe we just wanted to notify the Court that it's briefed.
4 We did not intend to reargue it before you unless there's
5 specific questions that Your Honor would like answered.

6 JUDGE VANASKIE: Okay. All right.

7 MR. NIGH: Your Honor, Daniel Nigh for --

8 JUDGE VANASKIE: And if you're not ready, that's okay
9 too. I'll give you the question. You can send me a letter
10 brief on it.

11 MR. NIGH: Daniel Nigh for the plaintiffs. We're
12 ready to address questions if Your Honor has questions for it.
13 But we do believe that it was fully argued six months ago.

14 JUDGE VANASKIE: Uh-huh.

15 MR. NIGH: And it's ready and fully briefed; argued
16 and briefed.

17 JUDGE VANASKIE: It was fully briefed. I looked at
18 the transcript from six months ago, and we really didn't take
19 any argument at that time.

20 But the question I have is, if they're only looking
21 for NDC numbers, what's the big deal?

22 MR. NIGH: I think that that's truly only the first
23 step are NDC numbers. I think this is sort of like if you give
24 a mouse a cookie, then he'll want a glass of milk and you go on
25 down the line from there.

1 I don't think that that's going to be it. I think
2 that they're going to be looking for more, but it does
3 supplement. I mean, even one issue, it could lead to
4 supplementation of expert reports, and then the next thing you
5 know, they may be asking for depositions, rebriefing on
6 *Daubert*. I mean, it's an issue that we think is just a
7 distraction at this point. And I think we've fully briefed how
8 it's really irrelevant, but it does get into -- it may get into
9 some more of these issues on how Valisure wasn't equipped,
10 unreliable in terms of actually being able to test for NDMA in
11 Diovan and how every other agency -- even the Defendant ZHP has
12 admitted that there was no NDMA in name brand Diovan.

13 So it opens up a can of worms to get into what is the
14 NDC code, you know, and providing those NDC codes. And we
15 think the discovery has long past.

16 JUDGE VANASKIE: Anyone prepared on the defense side
17 on this issue?

18 MR. HARKINS: Your Honor, I think we would like time
19 to specifically brief and then present argument on it if you
20 consider there to be unanswered questions. But I will note, we
21 are only asking for the information that is requested in the
22 subpoena, the NDC code numbers.

23 JUDGE VANASKIE: Right.

24 MR. HARKINS: We do not know and neither party knows
25 whether that is going to lead to any other requests for

1 discovery beyond the specific, incredibly narrowly tailored
2 request.

3 JUDGE VANASKIE: But you're not willing to commit
4 that you wouldn't pursue any other discovery depending upon
5 that information?

6 MR. HARKINS: Your Honor, no, we can't at this time.

7 JUDGE VANASKIE: I understand that. I understand.

8 Why don't you address the timeliness. Or if you
9 want, maybe you want to submit another letter brief on that.
10 But, you know, discovery was concluded. An order was issued
11 saying subpoenas had to be issued by a certain date. This
12 comes much after that deadline.

13 MR. HARKINS: Your Honor, I might defer to my
14 colleagues who prepared the initial briefing, if you would. I
15 don't know if any of them are prepared.

16 JUDGE VANASKIE: And I'm hitting you cold. I'm
17 sorry.

18 MR. BERNARDO: Your Honor, this is Rich Bernardo for
19 the ZHP defendants. And, again, this is all fleshed out in our
20 brief.

21 JUDGE VANASKIE: It's in the briefs, yeah.

22 MR. BERNARDO: Your Honor, but the point is, the
23 deadline to which plaintiffs point is the deadline for
24 plaintiffs to issue all third-party subpoenas, and that makes
25 sense, right? It makes sense that there would be a cutoff for

1 plaintiffs to seek.

2 But, you know, as I frequently hear from plaintiffs,
3 discovery is an ongoing matter, and this is issues that have
4 come up in depositions and in connections with experts. So
5 there's not a deadline for the defendants to issue third-party
6 subpoenas.

7 And even if there was a deadline for it, which there
8 isn't, there certainly is good cause here. And as Mr. Harkins
9 said, we're looking for codes, that's it. I mean, it could be
10 an email that says, "here are the following codes," and we can
11 leave it to another day if those codes would require additional
12 discovery. And we understand that that would be on us to come
13 back to the Court and seek for that.

14 But all we're seeking right now is codes. There's no
15 burden. There's really no timeliness issue. And even if there
16 is, there's good cause to get by that. I mean, we're looking
17 for the truth here.

18 JUDGE VANASKIE: Right. All right. But there are
19 deadlines.

20 MR. NIGH: Your Honor --

21 JUDGE VANASKIE: And there are deadlines for fact
22 discovery. And it seems to me you're beyond that deadline.

23 MR. BERNARDO: We disagree that the deadlines would
24 apply to this particular circumstance. And if they do, we
25 agree, for the reasons set forth in the brief, that there would

1 be good cause for this particular, very narrowly tailored
2 discovery to excuse that.

3 JUDGE VANASKIE: All right. Thank you.

4 MR. BERNARDO: Thank you, Your Honor.

5 MR. NIGH: Can I respond?

6 JUDGE VANASKIE: Yes, you may.

7 MR. NIGH: Yes. I think the clear thing is that the
8 fact discovery, all fact discovery deadline has passed. That
9 passed for a reason because you need to have a record that your
10 experts rely upon. There's nothing here that makes this expert
11 discovery. That was an attempt, but we found out that
12 Dr. Najafi doesn't possess any knowledge on the NDC code issue.
13 This is truly a Valisure issue.

14 This report was published in May of 2019. This is an
15 issue that has long been known. They could have been asked for
16 this discovery back in May of 2019. This is very outdated. We
17 also don't think that this would ever be admissible, you know,
18 because of all the problems with Valisure's testing. None of
19 this information is going to be admissible at trial, we don't
20 believe.

21 JUDGE VANASKIE: Well, that's down the road, though.
22 That's, you know --

23 MR. NIGH: Yeah. But we're talking about --

24 JUDGE VANASKIE: The question is, what if the
25 information, the NDC, is for Exforge or Diovan that shows

1 nitrosamine contamination?

2 MR. NIGH: Yeah. We're going to be talking about
3 then how it's 14 parts per million -- or it's 14 nanograms, and
4 we would get into this whole line of how when you test, there's
5 residual NDMA when you test from one to another.

6 The sole purpose of the May 2019 petition was not for
7 NDMA. It was for DMF, for Macleods. And so all sort of the
8 testing for validation and all of those issues to make sure
9 that your testing is accurate, all those issues are going to
10 come into play if we open this door even further.

11 JUDGE VANASKIE: Okay. Thank you.

12 One last issue, and that is the one interrogatory on
13 the question of production of transaction by transaction,
14 information versus aggregated information.

15 MS. RICHER: Yes, Your Honor. Kristen Richer for the
16 retailer defendants. Do you mean with respect to the
17 third-party payer payment information or --

18 JUDGE VANASKIE: Excuse me?

19 MS. RICHER: Do you mean with respect to the retailer
20 discovery?

21 JUDGE VANASKIE: Yes.

22 MS. RICHER: Yes. Yes, Your Honor.

23 JUDGE VANASKIE: So is anybody prepared to argue that
24 on behalf of the plaintiff?

25 MS. WHITELEY: I'm here, Your Honor.

1 So as I understand it, we have reached agreement to a
2 certain extent. But, Ms. Richer, would you state your position
3 and we'll respond?

4 MS. RICHER: Well, with regard to the format of the
5 production of third-party payer payment information, I think
6 that issue is fully briefed and was argued to Your Honor in
7 June.

8 JUDGE VANASKIE: Right.

9 MS. RICHER: And so it's just a question of where
10 Your Honor comes out on that, and from there we'll move forward
11 with that discovery. But for the reasons we stated, we don't
12 think it's necessary that it be produced.

13 JUDGE VANASKIE: Right. Why is
14 transaction-by-transaction data necessary?

15 MS. WHITELEY: Your Honor, this is the information
16 that we were working with our experts, and we had presented
17 that in that way that we think is necessary in order to present
18 our damages. And also, we've asked for it as it relates to
19 class notice.

20 (Reporter clarified the record.)

21 MS. WHITELEY: Class notice.

22 JUDGE VANASKIE: Okay.

23 MS. RICHER: And, Your Honor, if I could just
24 briefly, I think the class notice point is an important one
25 because to the extent they're talking about third-party payer

1 class notice, that's not a class that we are defendants in.
2 For consumer class purposes, we're giving them consumer
3 information. That production is in the works. So I think
4 those are two different issues that we think it's important to
5 maintain the boundary between the two of them.

6 MS. WHITELEY: So in addition to anything that's in
7 our -- you know, we'll respect your ruling on the briefings,
8 and then there are a few other minor points that we discussed
9 earlier this morning that we're going to try to work out in the
10 coming week.

11 JUDGE VANASKIE: All right. Very well. That's all
12 the questions that I had.

13 JUDGE KUGLER: Do you want to talk about the
14 losartan, irbesartan schedule?

15 JUDGE VANASKIE: Well, you're working that out,
16 right?

17 MS. GOLDENBERG: Yes. We'll get you the proposed
18 order.

19 JUDGE VANASKIE: They're going to get me a proposed
20 order on that. They've agreed to the compromised position that
21 was in footnote 2 of the agenda letter.

22 MR. HARKINS: That's correct, Your Honor.

23 JUDGE VANASKIE: And they're kicking down the road
24 some of the other issues.

25 MR. HARKINS: Yes. We'll meet and confer further on

1 that.

2 JUDGE VANASKIE: Okay.

3 JUDGE KUGLER: Any other issues that you want to
4 raise today?

5 MR. SLATER: None for plaintiff, Your Honor.

6 MR. OSTFELD: Nothing for defendants, Your Honor.

7 JUDGE KUGLER: When do you want to meet again? You
8 want to meet in August, the last week in August? Are people
9 available in the last week in August? I mean, I'll be here.

10 Thursday, the 31st, does that work for people?

11 MR. SLATER: I will not be here, Your Honor. But I'm
12 certainly not going to hold up the conference just for me.

13 MR. OSTFELD: Your Honor, I also will not be here.
14 And my understanding is based on our discussions around the
15 pending amended Class Notice Plan, it may be productive to wait
16 an additional week or two. There may be an ability to discuss
17 that with Your Honor in early September, and we may not be able
18 to do that in late August.

19 JUDGE KUGLER: Well, that was my next question, was
20 whether we would be able to accomplish anything in late August.
21 But that's fine, we can move it into September, if you want.

22 MS. WHITELEY: Your Honor, if I may.

23 JUDGE KUGLER: Go ahead.

24 MS. WHITELEY: Judge Vanaskie, we probably will have
25 some issues for you for the midterm conference, and I believe

1 that that will probably take care of everything that we need
2 until September.

3 JUDGE VANASKIE: All right.

4 JUDGE KUGLER: And when is that scheduled for now?

5 MS. GOLDENBERG: Judge, I also just wanted to flag
6 that the proposed losartan and irbesartan schedule does have a
7 deadline at the end of August.

8 JUDGE VANASKIE: End of August for you to submit
9 disputes, yeah.

10 MS. GOLDENBERG: Right. So we can still do that.
11 We'd like to get them for reasonably close to that date so we
12 can stick to the other deadlines that we're going to be
13 submitting to you in the proposed order; but I agree, the last
14 week of August may be tough for a lot of people.

15 JUDGE VANASKIE: All right. But you'll be teeing up
16 some issues before that for me?

17 MS. WHITELEY: Well, we'll try not to, or have it to
18 you as soon as possible, but I expect there will be a few.

19 JUDGE VANASKIE: Okay. Very well.

20 JUDGE KUGLER: September the 6th is a Wednesday.
21 Does that work? Does that give you enough time; do you think?

22 MR. OSTFELD: Maybe one more week, Your Honor, the
23 following week.

24 JUDGE KUGLER: Tuesday the 12th or Thursday the 14th.
25 Do you have any preference?

1 MR. SLATER: 12th would probably be good for us.

2 JUDGE KUGLER: Okay.

3 MR. OSTFELD: I can do the 12th.

4 The 12th works for us, Your Honor.

5 JUDGE KUGLER: All right. You want to do it
6 1:00 p.m. again? Does that work for everybody?

7 MR. OSTFELD: Yes.

8 JUDGE KUGLER: Okay. Well, thank you. Enjoy the
9 balance of the summer. And we'll see you in September.

10 There's a song. I don't know if any of you are old
11 enough to remember that song. Judge Vanaskie.

12 JUDGE VANASKIE: Oh, he's old enough.

13 (Laughter.)

14 JUDGE KUGLER: Anyway. Mr. Slater, can I talk to you
15 about Hetero for a minute, please?

16 MR. SLATER: Sure.

17 THE COURTROOM DEPUTY: All rise.

18 (Proceedings concluded at 1:35 p.m.)

19 - - - - -
20 **FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**
21 - - - - -

22 I certify that the foregoing is a correct transcript
23 from the record of proceedings in the above-entitled matter.

24 /S/John J. Kurz, RDR-RMR-CRR-CRC

August 6, 2023

25 Court Reporter/Transcriber

	2023 [4] 1/8 9/3 9/5 20/24 2024 [1] 9/6 2029 [1] 3/12 21 [1] 3/16 2200 [1] 2/23 23 [1] 7/1 2500 [1] 2/19 27 [1] 7/3 28 [1] 9/6 2800 [1] 3/6 29 [1] 7/1 3 30 [2] 6/25 7/2 300 [1] 3/12 30305 [1] 2/19 31 [1] 9/3 31st [1] 18/10 3333 [1] 2/19 3600 [1] 2/24 38th [1] 2/14 4 42-128 [1] 2/10 45202 [1] 3/7 4th [1] 1/7 5 576-7094 [1] 1/21 6 600 [1] 3/6 601 [1] 3/3 6th is [1] 19/20 7 701 [1] 1/17 70130 [1] 1/18 7094 [1] 1/21 75201 [1] 2/24 8 856 [1] 1/21 9 90067 [1] 3/13 90277 [1] 2/7 A ability [1] 18/16 able [4] 8/17 11/10 18/17 18/20 above [1] 20/22 above-entitled [1] 20/22 accomplish [1] 18/20 accurate [1] 15/9 Achkova [1] 5/6 Actavis [2] 2/20 2/20 ACTION [1] 1/3 actually [1] 11/10 ADAM [1] 1/13 Adams [1] 7/14 addition [1] 17/6 additional [2] 13/11 18/16 address [3] 9/24 10/12 12/8	addressed [1] 5/15 admissible [2] 14/17 14/19 admitted [1] 11/12 after [1] 12/12 afternoon [1] 4/5 again [3] 12/19 18/7 20/6 agency [1] 11/11 agenda [2] 7/3 17/21 aggregated [1] 15/14 ago [2] 10/13 10/18 agree [2] 13/25 19/13 agreeable [2] 9/2 9/3 agreed [2] 8/21 17/20 agreement [1] 16/1 ahead [2] 8/24 18/23 Aid [1] 3/14 aided [1] 1/22 ALFANO [1] 2/13 all [25] also [5] 3/18 14/17 16/18 18/13 19/5 amended [1] 18/15 AmerisourceBergen [1] 3/7 Andrews [1] 6/16 Angeles [1] 3/13 announce [1] 5/18 another [3] 12/9 13/11 15/5 answered [1] 10/5 Anthony [1] 7/23 Antonio [1] 7/14 any [10] 5/2 9/24 10/19 11/25 12/4 12/15 14/12 18/3 19/25 20/10 anybody [2] 5/11 15/23 anybody's [1] 5/17 Anyone [1] 11/16 anything [3] 8/8 17/6 18/20 anyway [2] 5/19 20/14 apologies [1] 8/23 apply [1] 13/24 are [18] 4/10 4/16 6/25 7/1 9/1 9/24 10/23 11/21 12/15 13/10 13/18 13/21 15/9 17/1 17/4 17/8 18/8 20/10 argue [1] 15/23 argued [3] 10/13 10/15 16/6 argument [2] 10/19 11/19 around [1] 18/14 ARPS [1] 2/9 Arthur [1] 7/24 asked [2] 14/15 16/18 asking [2] 11/5 11/21 Atlanta [1] 2/19 attempt [1] 14/11 August [11] 1/8 9/3 18/8 18/8 18/9 18/18 18/20 19/7 19/8 19/14 20/24 August 31 [1] 9/3 available [1] 18/9 Avenue [3] 2/23 3/3 3/9	away [1] 4/7 Axt [1] 6/11 B back [2] 13/13 14/16 balance [1] 20/9 Barbara [2] 6/14 8/4 BARNES [1] 3/11 Bartels [1] 6/5 Barzee [1] 7/19 based [1] 18/14 Beach [1] 2/7 Beatrice [1] 6/13 because [3] 14/9 14/18 16/25 been [3] 4/15 14/15 14/15 before [4] 4/1 9/21 10/4 19/16 behalf [2] 4/20 15/24 BEHRAM [1] 2/6 being [1] 11/10 believe [5] 9/7 10/3 10/13 14/20 18/25 Benjamin [1] 6/16 Benton [1] 7/4 BERNARDO [2] 2/10 12/18 BERNE [1] 3/5 between [1] 17/5 beyond [2] 12/1 13/22 big [1] 10/21 Black [1] 7/21 BOSICK [1] 2/13 boundary [1] 17/5 brand [1] 11/12 brief [5] 10/10 11/19 12/9 12/20 13/25 briefed [6] 10/3 10/15 10/16 10/17 11/7 16/6 briefing [2] 9/9 12/14 briefings [1] 17/7 briefly [1] 16/24 briefs [2] 9/25 12/21 BRITTNEY [1] 3/2 Brown [1] 8/3 Building [1] 1/7 burden [1] 13/15 Burton [1] 7/23 Buxton [1] 7/2 Byron [1] 7/10 C California [2] 2/7 3/13 Camden [1] 1/8 Camp [1] 1/17 CAMPBELL [1] 3/9 can [13] 4/11 4/24 5/7 5/13 10/9 11/13 13/10 14/5 18/21 19/10 19/12 20/3 20/14 can't [1] 12/6 Cardinal [1] 3/10 care [1] 19/1 case [3] 1/5 4/24 5/9 cases [4] 4/15 5/9 6/25 7/3 cause [9] 4/11 4/16 4/24	5/2 5/8 6/21 13/8 13/16 14/1 Centre [1] 2/14 Century [1] 3/12 certain [2] 12/11 16/2 certainly [3] 9/18 13/8 18/12 CERTIFICATE [1] 20/19 certify [1] 20/21 Cincinnati [1] 3/7 circuit [1] 5/13 circumstance [1] 13/24 CIVIL [1] 1/3 clarified [1] 16/20 class [7] 16/19 16/21 16/24 17/1 17/1 17/2 18/15 clear [1] 14/7 Clerk [1] 3/20 close [1] 19/11 Coast [1] 2/7 code [3] 11/14 11/22 14/12 codes [5] 11/14 13/9 13/10 13/11 13/14 Cohen [1] 1/7 cold [1] 12/16 colleagues [1] 12/14 college [1] 4/7 come [4] 9/21 13/4 13/12 15/10 comes [2] 12/12 16/10 coming [1] 17/10 Commencing [1] 1/9 commit [1] 12/3 complete [1] 9/6 compromise [2] 8/20 8/22 compromised [1] 17/20 computer [1] 1/22 computer-aided [1] 1/22 concluded [2] 12/10 20/18 confer [3] 8/17 9/8 17/25 conference [6] 1/5 4/25 5/9 6/21 18/12 18/25 confirm [1] 9/1 CONLEE [1] 1/16 connections [1] 13/4 consider [1] 11/20 consumer [2] 17/2 17/2 contamination [1] 15/1 continue [1] 9/7 continued [3] 2/1 3/1 4/24 cookie [1] 10/24 Cooper [1] 1/7 Corp [1] 2/25 Corporation [1] 3/14 correct [7] 4/18 4/19 6/23 6/24 9/11 17/22 20/21 could [6] 8/13 9/7 11/3 13/9 14/15 16/23 counsel [14] 1/15 1/18 2/4 2/8 2/11 2/15 2/20
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C	discussed [1] 17/8 discussions [1] 18/14 dismissed [1] 4/16 disputes [2] 9/4 19/9 distraction [1] 11/7 DISTRICT [4] 1/1 1/1 1/10 4/2 Dixie [1] 7/2 DMF [1] 15/7 documents [1] 9/5 does [7] 11/2 11/8 18/10 19/6 19/21 19/21 20/6 doesn't [1] 14/12 door [1] 15/10 down [3] 10/25 14/21 17/23 Dr. [1] 14/12 Dr. Najafi [1] 14/12 Drugs [1] 3/17	few [4] 6/22 9/17 17/8 19/18 fine [1] 18/21 first [4] 4/12 8/13 9/20 10/22 flag [1] 19/5 fleshed [1] 12/19 FLOM [1] 2/9 Floor [2] 2/3 2/14 following [2] 13/10 19/23 follows [1] 4/3 footnote [2] 8/19 17/21 foregoing [1] 20/21 format [1] 16/4 forth [1] 13/25 forward [1] 16/10 found [1] 14/11 FRANK [1] 2/13 FREEMAN [1] 1/13 frequently [1] 13/2 FULBRIGHT [1] 2/22 fully [5] 10/13 10/15 10/17 11/7 16/6 further [4] 8/8 8/9 15/10 17/25	he's [3] 4/9 4/10 20/12 Health [1] 3/10 hear [1] 13/2 held [1] 4/1 Henley [1] 7/24 here [11] 4/9 5/11 5/17 13/8 13/10 13/17 14/10 15/25 18/9 18/11 18/13 Hetero [3] 3/17 3/17 20/15 Higgins [1] 8/2 Highway [1] 2/7 HILL [1] 3/15 Hines [1] 8/4 hitting [1] 12/16 hold [1] 18/12 Honor [33] HONORABLE [3] 1/10 3/20 4/1 hope [1] 4/6 huh [1] 10/14	5/13 8/11 8/16 18/24 19/5 20/11 Judicial [1] 3/20 June [1] 16/7 just [7] 9/1 10/3 11/6 16/9 16/23 18/12 19/5	
D	D'LESLI [1] 2/23 Dallas [1] 2/24 damages [1] 16/18 DANIEL [4] 2/2 3/9 10/7 10/11 Darlene [1] 7/19 data [1] 16/14 date [3] 8/7 12/11 19/11 Daubert [1] 11/6 DAVID [2] 1/17 7/25 DAVIS [2] 2/17 2/23 day [1] 13/11 days [1] 9/17 DC [2] 2/4 3/10 deadline [11] 9/4 9/5 9/6 12/12 12/23 12/23 13/5 13/7 13/22 14/8 19/7 deadlines [5] 9/8 13/19 13/21 13/23 19/12 deal [1] 10/21 dealing [2] 8/13 9/22 Dean [1] 6/18 December [1] 9/4 December 15 [1] 9/4 Defendant [5] 2/11 2/15 2/25 3/10 11/11 defendants [12] 2/20 3/4 3/7 3/13 3/17 4/21 10/2 12/19 13/5 15/16 17/1 18/6 defendants' [1] 8/19 defense [2] 4/21 11/16 defer [1] 12/13 deficiency [1] 4/14 depending [1] 12/4 depositions [3] 9/8 11/5 13/4 Deputy [1] 3/19 Dianne [1] 7/24 did [1] 10/4 didn't [1] 10/18 different [1] 17/4 Dinah [1] 8/2 Diovan [3] 11/11 11/12 14/25 disagree [1] 13/23 discovery [17] 8/14 8/15 9/23 11/15 12/1 12/4 12/10 13/3 13/12 13/22 14/2 14/8 14/8 14/11 14/16 15/20 16/11 discuss [1] 18/16	earlier [1] 17/9 early [1] 18/17 East [1] 3/12 effect [1] 9/3 egg [1] 9/21 Eisenhower [1] 1/14 ELLIS [1] 3/2 email [1] 13/10 Emmett [1] 8/3 end [2] 19/7 19/8 Enjoy [1] 20/8 enough [3] 19/21 20/11 20/12 entitled [1] 20/22 equipped [1] 11/9 ESQUIRE [19] 1/13 1/16 1/17 2/2 2/3 2/6 2/10 2/13 2/14 2/17 2/18 2/18 2/23 3/2 3/6 3/9 3/12 3/15 3/20 Estate [4] 6/13 7/6 8/4 8/4 even [5] 11/3 11/11 13/7 13/15 15/10 eventually [1] 9/9 ever [1] 14/17 every [1] 11/11 everybody [1] 20/6 Everybody's [1] 4/6 everything [1] 19/1 excuse [2] 14/2 15/18 Exforge [1] 14/25 expect [1] 19/18 expert [3] 9/9 11/4 14/10 experts [3] 13/4 14/10 16/16 extension [1] 4/23 extent [2] 16/2 16/25	GEOPPINGER [1] 3/6 George [1] 5/24 Georgia [1] 2/19 getting [1] 4/7 Ghrigsby [1] 7/23 give [3] 10/9 10/23 19/21 giving [1] 17/2 glass [1] 10/24 GOLDENBERG [2] 2/2 2/3 Gonzalo [1] 8/2 good [5] 4/5 13/8 13/16 14/1 20/1 GORDON [1] 2/13 got [1] 4/9 granted [1] 4/23 greater [1] 9/25 GREENBERG [2] 2/17 4/20 GREGORY [2] 2/18 7/14 group [1] 4/21 guess [1] 4/7 Guzman [1] 7/14	incredibly [1] 12/1 Industries [1] 2/20 information [10] 11/21 12/5 14/19 14/25 15/14 15/14 15/17 16/5 16/15 17/3 initial [1] 12/14 intend [1] 10/4 interrogatory [1] 15/12 irbesartan [4] 1/4 8/14 17/14 19/6 irrelevant [1] 11/8 isn't [1] 13/8 issue [14] 9/20 9/21 10/1 11/3 11/6 11/17 12/24 13/5 13/15 14/12 14/13 14/15 15/12 16/6 issued [2] 12/10 12/11 issues [10] 8/12 11/9 13/3 15/8 15/9 17/4 17/24 18/3 18/25 19/16	L-E-M-E-N [1] 6/7 Labs [1] 3/17 Larry [1] 3/19 last [4] 15/12 18/8 18/9 19/13 late [2] 18/18 18/20 Laughter [1] 20/13 Law [1] 3/20 Lawrence [1] 7/17 lead [2] 11/3 11/25 leave [1] 13/11 Lee [2] 6/3 7/1 Lemen [1] 6/7 length [1] 9/25 letter [4] 9/25 10/9 12/9 17/21 Lexington [1] 3/3 LIABILITY [1] 1/4 like [4] 10/5 10/23 11/18 19/11 Lillian [1] 7/23 line [2] 10/25 15/4 Lipscomb [1] 6/14 list [3] 4/22 4/23 5/5 listed [3] 5/5 6/20 8/6 LITIGATION [1] 1/5 LLC [3] 1/13 1/16 2/20 LLP [10] 2/6 2/9 2/13 2/17 2/22 3/2 3/5 3/8 3/11 3/15 LOCKARD [1] 2/17 long [2] 11/15 14/15 looked [1] 10/17 looking [4] 10/20 11/2 13/9 13/16 Loretta [1] 3/20 Lori [1] 7/14 Los [1] 3/13
F	face [1] 9/22 fact [3] 13/21 14/8 14/8 fault [1] 8/25 February [1] 9/6 February 28 [1] 9/6 FEDERAL [1] 20/19 Feria [1] 4/15	happy [1] 8/16 Hardwick [1] 4/15 Hardy [1] 7/24 HARKINS [4] 2/18 4/20 8/8 13/8 Harris [1] 7/2 has [5] 10/12 11/11 11/15 14/8 14/15 have [18] 4/5 4/7 4/15 4/22 5/1 5/18 6/22 8/18 8/21 10/20 13/3 14/9 14/15 16/1 18/24 19/6 19/17 19/25 he'll [1] 10/24	Jackson [1] 7/8 James [2] 6/9 6/16 Janecek [1] 4/15 JASON [1] 2/14 JEFFREY [1] 3/6 Jerome [1] 7/4 JERSEY [4] 1/1 1/8 1/14 3/16 Jesus [1] 7/24 John [3] 1/20 1/20 20/24 joint [1] 4/21 Jonathan [1] 7/1 Joseph [1] 5/24 Joy [1] 8/2 JUDGE [9] 1/10 4/2 4/9		

L	MURTHA [1] 3/15 my [5] 8/24 9/22 12/13 18/14 18/19 lot [2] 4/8 19/14 Louisiana [1] 1/18 Ltd [2] 2/20 3/4	15/12 16/24 19/22 ones [1] 5/15 ongoing [1] 13/3 only [3] 10/20 10/22 11/21 open [2] 4/1 15/10 opens [1] 11/13 order [11] 4/11 4/24 5/2 9/2 9/15 9/23 12/10 16/17 17/18 17/20 19/13 orders [4] 4/16 5/7 5/8 6/20 Orleans [1] 1/18 OSTFELD [1] 2/18 other [9] 4/22 9/8 11/11 11/25 12/4 17/8 17/24 18/3 19/12 our [9] 4/23 5/4 6/25 8/17 12/19 16/16 16/18 17/7 18/14 out [6] 4/12 12/19 14/11 16/10 17/9 17/15 outdated [1] 14/16 over [1] 8/13 Oxford [1] 2/14	plaintiffs' [2] 5/16 9/10 Plan [1] 18/15 play [1] 15/10 please [2] 4/5 20/15 point [4] 11/7 12/22 12/23 16/24 points [1] 17/8 Polk [1] 6/16 position [3] 8/19 16/2 17/20 possess [1] 14/12 possible [1] 19/18 potential [1] 8/19 preference [1] 19/25 prepared [5] 9/24 11/16 12/14 12/15 15/23 present [3] 3/18 11/19 16/17 presented [1] 16/16 Princeton [1] 3/16 principal [1] 9/2 prior [1] 8/17 probably [3] 18/24 19/1 20/1 problems [1] 14/18 proceedings [4] 1/22 4/1 20/18 20/22 produce [1] 9/5 produced [2] 1/22 16/12 production [4] 9/7 15/13 16/5 17/3 productive [1] 18/15 PRODUCTS [1] 1/4 proposed [5] 9/15 17/17 17/19 19/6 19/13 protective [1] 9/23 providing [1] 11/14 published [1] 14/14 purpose [1] 15/6 purposes [1] 17/2 pursue [1] 12/4 put [1] 5/2
M	M-E-Z-A [1] 6/13 Macleods [1] 15/7 MacStravic [1] 3/19 Magee [1] 6/9 maintain [1] 17/5 make [1] 15/8 makes [4] 4/13 12/24 12/25 14/10 management [3] 1/5 4/25 5/9 Manhattan [1] 2/10 MARLENE [1] 2/3 Martinez [1] 8/3 Mary [1] 8/4 MASTER [2] 1/11 4/3 matter [3] 4/22 13/3 20/22 matters [2] 4/17 8/6 may [11] 11/5 11/8 14/6 14/14 14/16 15/6 18/15 18/16 18/17 18/22 19/14 May 2019 [1] 15/6 maybe [2] 12/9 19/22 MAZIE [1] 1/13 Mckesson [1] 2/25 md [1] 1/4 me [6] 10/9 13/22 15/18 17/19 18/12 19/16 MEAGHER [1] 2/9 mean [7] 11/3 11/6 13/9 13/16 15/16 15/19 18/9 mechanical [1] 1/22 meet [5] 8/17 9/7 17/25 18/7 18/8 meeting [1] 8/17 Meza [1] 6/13 Michelle [1] 6/1 midterm [1] 18/25 might [1] 12/13 milk [1] 10/24 million [1] 15/3 minor [1] 17/8 minute [1] 20/15 Mitchell [1] 1/7 month [1] 4/18 months [2] 10/13 10/18 more [4] 6/22 11/2 11/9 19/22 MORING [1] 3/8 morning [1] 17/9 motion [2] 9/22 9/23 mouse [1] 10/24 move [2] 16/10 18/21 Mr. [3] 8/8 13/8 20/14 Mr. Harkins [2] 8/8 13/8 Mr. Slater [1] 20/14 Ms. [1] 16/2 Ms. Richer [1] 16/2 much [1] 12/12	p.m. [4] 1/9 4/3 20/6 20/18 Pacific [1] 2/7 PACKARD [1] 2/6 njd.uscourts.gov [1] 1/20 no [28] noncustodial [1] 9/5 None [2] 14/18 18/5 NORTON [1] 2/22 not [12] 10/4 10/8 11/24 12/3 13/5 15/6 17/1 18/11 18/12 18/13 18/17 19/17 note [1] 11/20 notes [1] 5/15 nothing [3] 8/9 14/10 18/6 notice [5] 16/19 16/21 16/24 17/1 18/15 notices [1] 4/14 notify [1] 10/3 now [3] 6/22 13/14 19/4 number [12] 1/3 4/23 5/1 5/5 5/5 5/5 5/5 5/6 7/1 7/1 7/2 numbers [3] 10/21 10/23 11/22 NW [2] 2/3 3/9 NY [1] 2/11	parties [3] 8/17 9/1 9/7 parts [1] 15/3 party [6] 11/24 12/24 13/5 15/17 16/5 16/25 passed [2] 14/8 14/9 past [1] 11/15 Pauline [1] 7/2 payer [3] 15/17 16/5 16/25 payment [2] 15/17 16/5 pending [2] 4/10 18/15 Pennsylvania [2] 2/15 3/9 people [4] 4/6 18/8 18/10 19/14 per [1] 15/3 petition [1] 15/6 Petrie [1] 7/12 Pharma [2] 2/20 3/4 Pharmaceutical [1] 2/20 Pharmaceuticals [3] 2/15 2/20 3/4 Pharmacy [1] 3/13 Phyllis [1] 6/11 Piedmont [1] 2/19 PIETRAGALLO [1] 2/13 Pittsburgh [1] 2/15 plaintiff [2] 15/24 18/5 plaintiffs [9] 1/15 1/18 2/4 2/8 10/11 12/23 12/24 13/1 13/2
O	raise [1] 18/4 RASO [1] 2/2 RASPANTI [1] 2/13 RBK [1] 1/4 RDR [1] 20/24 RDR-RMR-CRR-CRC [1] 20/24 RE [1] 1/3 reached [1] 16/1 ready [3] 10/8 10/12 10/15 really [3] 10/18 11/8 13/15 reargue [1] 10/4 reason [1] 14/9 reasonably [1] 19/11	question [6] 10/9 10/20 14/24 15/13 16/9 18/19 questions [5] 10/5 10/12 10/12 11/20 17/12 quite [1] 6/22	R
			raise [1] 18/4 RASO [1] 2/2 RASPANTI [1] 2/13 RBK [1] 1/4 RDR [1] 20/24 RDR-RMR-CRR-CRC [1] 20/24 RE [1] 1/3 reached [1] 16/1 ready [3] 10/8 10/12 10/15 really [3] 10/18 11/8 13/15 reargue [1] 10/4 reason [1] 14/9 reasonably [1] 19/11
			S
			S-M-A-S-O-N [1] 4/17 S-T-U-R-G-I-L-L [1] 5/11 said [1] 13/9

<p>S</p> <p>Salazar [1] 8/2 saying [1] 12/11 says [1] 13/10 schedule [5] 8/14 8/18 9/10 17/14 19/6 scheduled [1] 19/4 Schram [1] 6/18 seat [1] 4/5 second [2] 6/25 9/21 see [2] 4/9 20/9 seek [2] 13/1 13/13 seeking [1] 13/14 seems [2] 8/15 13/22 Seifert [1] 5/6 send [1] 10/9 sense [3] 4/13 12/25 12/25 September [5] 18/17 18/21 19/2 19/20 20/9 set [1] 13/25 Sharon [1] 5/22 Shawna [1] 8/3 Shirley [1] 7/21 short [1] 5/13 short-circuit [1] 5/13 show [7] 4/11 4/16 4/24 5/2 5/7 5/8 6/21 shows [1] 14/25 side [1] 11/16 six [2] 10/13 10/18 SKADDEN [1] 2/9 SLATE [1] 2/9 SLATER [3] 1/13 1/13 20/14 Smason [1] 4/17 Smith [2] 3/20 7/24 so [17] 4/8 4/16 4/24 5/16 5/19 9/14 9/19 11/13 13/4 15/7 15/23 16/1 16/9 17/3 17/6 19/10 19/11 sole [1] 15/6 some [5] 4/9 11/9 17/24 18/25 19/16 song [2] 20/10 20/11 soon [2] 4/7 19/18 sorry [2] 8/24 12/17 sort [2] 10/23 15/7 South [1] 2/7 speak [1] 5/17 SPECIAL [2] 1/11 4/3 specific [2] 10/5 12/1 specifically [1] 11/19 Square [1] 2/3 STANOCH [1] 1/17 state [1] 16/2 stated [1] 16/11 statement [1] 8/19 STATES [3] 1/1 1/10 4/2 status [1] 6/21 stenography [1] 1/22 step [1] 10/23 Steve [1] 4/19 STEVEN [2] 2/18 7/12 stick [1] 19/12 still [1] 19/10 STOY [1] 2/13</p>	<p>Stratton [1] 7/15 Street [2] 1/17 3/6 Streets [1] 1/7 stuff [1] 4/11 Sturgill [1] 5/10 submit [5] 9/2 9/4 9/14 12/9 19/8 submitted [1] 9/25 submitting [1] 19/13 subpoena [2] 9/23 11/22 subpoenas [3] 12/11 12/24 13/6 such [1] 9/8 Suite [5] 2/10 2/19 2/24 3/6 3/12 summer [2] 4/6 20/9 supplement [1] 11/3 supplementation [1] 11/4 sure [2] 15/8 20/16</p> <hr/> <p>T</p> <p>table [1] 6/25 Taffnie [1] 5/20 tailored [2] 12/1 14/1 take [3] 4/7 10/18 19/1 Taliaferro [1] 7/17 talk [3] 4/10 17/13 20/14 talking [3] 14/23 15/2 16/25 Tasman [1] 6/18 teeing [1] 19/15 terms [1] 11/10 test [3] 11/10 15/4 15/5 testing [3] 14/18 15/8 15/9 Teva [3] 2/20 2/20 4/20 Texas [1] 2/24 thank [5] 8/9 14/3 14/4 15/11 20/8 Thanks [1] 9/19 them [6] 5/16 5/18 12/15 17/2 17/5 19/11 these [1] 11/9 they're [6] 5/19 10/20 11/2 16/25 17/19 17/23 They've [1] 17/20 thing [2] 11/4 14/7 things [1] 4/10 think [21] third [6] 2/3 12/24 13/5 15/17 16/5 16/25 third-party [5] 12/24 13/5 15/17 16/5 16/25 this [26] THOMAS [3] 1/11 4/2 5/22 Thompson [1] 7/6 THORNBURG [1] 3/11 though [1] 14/21 three [5] 5/4 5/6 5/7 6/25 8/12 Thursday [3] 1/8 18/10 19/24 time [5] 9/13 10/19 11/18 12/6 19/21 timeliness [2] 12/8 13/15 Tina [1] 6/18</p>	<p>today [4] 8/13 8/18 9/24 18/4 TODD [2] 2/10 3/9 Tom [1] 6/7 Tommy [1] 7/4 too [1] 10/9 Torrent [2] 3/4 3/4 Torres [1] 7/25 tough [1] 19/14 transaction [4] 15/13 15/13 16/14 16/14 Transcriber [1] 20/25 transcript [3] 1/22 10/18 20/21 transcription [1] 1/22 TRAURIG [2] 2/17 4/20 trial [1] 14/19 truly [2] 10/22 14/13 truth [1] 13/17 try [2] 17/9 19/17 Tuesday [1] 19/24 two [3] 17/4 17/5 18/16</p> <hr/> <p>U</p> <p>U.S [1] 1/7 Uh [1] 10/14 Uh-huh [1] 10/14 ULMER [1] 3/5 unanswered [1] 11/20 understand [5] 4/14 12/7 12/7 13/12 16/1 understanding [1] 18/14 UNITED [3] 1/1 1/10 4/2 unless [1] 10/4 unreliable [1] 11/10 until [1] 19/2 up [4] 11/13 13/4 18/12 19/15 update [1] 4/22 updates [2] 5/2 5/4 upon [2] 12/4 14/10 us [4] 2/22 13/12 20/1 20/4 USA [1] 2/20</p> <hr/> <p>V</p> <p>validation [1] 15/8 Valisure [3] 9/22 11/9 14/13 Valisure's [1] 14/18 VALSARTAN [1] 1/3 VANASKIE [6] 1/11 4/3 4/9 8/11 18/24 20/11 Vander [1] 5/6 VAUGHN [1] 2/2 versus [1] 15/14 very [5] 9/19 14/1 14/16 17/11 19/19 VICTORIA [1] 2/17 Vincent [1] 7/6 Vine [1] 3/6</p> <hr/> <p>W</p> <p>wait [1] 18/15 WALLACK [1] 3/15 want [12] 4/18 5/2 6/22 10/24 12/9 12/9 17/13</p>
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